

**FILED**

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**FEBRUARY 4, 2009**

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**RECEIVED**  
Dec 29 2008  
DEC 29 2008  
MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

Mr. Daniel Peña, Pro-Se B69193

Mr. David Ernest, In Fed. Pris. Doing 45 YRS.

Mr. Antwan Graham, (Possibly still at Cook County Jail.)

Mr. Andre Patterson, (was in Dixon corr. center) (Back at C.C.J. Fighting a C.C.J. case)

(Enter above the full name  
of the plaintiff or plaintiffs in  
this action)

Judge 08cv7389  
JUDGE SHADUR  
MAG. JUDGE ASHMAN

vs.

Case No: \_\_\_\_\_  
(To be supplied)

1. Medical Doctor, Cook County Infirmary (Jail)

2. % Williams C.C.J. 3 to 11 shift Div. 9

3. % Davis C.C.J. 3 to 11 shift Div. 9

4. % Miller C.C.J. 3 to 11 shift Div. 9

5. % Lee C.C.J. 3 to 11 shift Div. 9

6. Captains, Lieutenants, Sergeants, All of Cook County Jail, and 3 to 11 p.m. shift %s.  
(Enter above the full name of ALL  
defendants in this action. Do not  
use "et al.")  
All working on or about September 22, 2007 in Div. 9.

**CHECK ONE ONLY:**



COMPLAINT UNDER THE CIVIL RIGHTS ACT, TITLE 42 SECTION 1983  
U.S. Code (state, county, or municipal defendants)

COMPLAINT UNDER THE CONSTITUTION ("BIVENS" ACTION), TITLE  
28 SECTION 1331 U.S. Code (federal defendants)

OTHER (cite statute, if known)

**BEFORE FILLING OUT THIS COMPLAINT, PLEASE REFER TO "INSTRUCTIONS FOR  
FILING." FOLLOW THESE INSTRUCTIONS CAREFULLY.**

**I. Plaintiff(s):**

- A. Name: Mr. Daniel Peña, Pro- Sec
- B. List all aliases: N/A
- C. Prisoner identification number: B69193
- D. Place of present confinement: Dixon Correctional Center
- E. Address: 2600 N. Brinton Ave, Dixon, Illinois 61021

(If there is more than one plaintiff, then each plaintiff must list his or her name, aliases, I.D. number, place of confinement, and current address according to the above format on a separate sheet of paper.)

**II. Defendant(s):**

(In A below, place the full name of the first defendant in the first blank, his or her official position in the second blank, and his or her place of employment in the third blank. Space for two additional defendants is provided in B and C.)

- A. Defendant: Physician in charge of Infirmary: On September 22, 2007  
 Title: M.D. (Medical Doctor) 3<sup>00</sup> P.M. to 11<sup>00</sup> P.M. Shift  
 Place of Employment: Cook County Jail, 2650 S. California Ave.
- B. Defendant: Correctional Officer Williams 3<sup>00</sup> P.M. to 11<sup>00</sup> P.M. Shift Div. 9  
 Title: Security Guard, Sherriff  
 Place of Employment: Cook County Jail, 2650 S. California Ave.
- C. Defendant: Correctional Officer Davis 3<sup>00</sup> P.M. to 11<sup>00</sup> P.M. Shift Div. 9  
 Title: Security Guard, Sherriff  
 Place of Employment: Cook County Jail, 2650 S. California Ave.

(If you have more than three defendants, then all additional defendants must be listed according to the above format on a separate sheet of paper.)

D. % Miller <sup>3:00</sup> P.M. to <sup>11:00</sup> P.M. Shift Div. 9, Security Guard, 2650 S. California Ave. Sheriff

E. % Lee <sup>3:00</sup> P.M. to <sup>11:00</sup> P.M. Shift Div. 9, Security Guard, 2650 S. California Ave. Sheriff

F. Captains <sup>3:00</sup> P.M. to <sup>11:00</sup> P.M. Shift Div. 9, Supervisor, 2650 S. California Ave. Sheriff

G. Sergeants <sup>3:00</sup> P.M. to <sup>11:00</sup> P.M. Shift Div. 9, Supervisor, 2650 S. California Ave. Sheriff

H. Lieutenants <sup>3:00</sup> P.M. to <sup>11:00</sup> P.M. Shift Div. 9, Supervisor, 2650 S. California Ave. Sheriff

D through H are all employed at Cook County Jail

**III. List ALL lawsuits you (and your co-plaintiffs, if any) have filed in any state or federal court in the United States:**

- A. Name of case and docket number: N/A
- B. Approximate date of filing lawsuit: N/A
- C. List all plaintiffs (if you had co-plaintiffs), including any aliases: N/A
- D. List all defendants: N/A
- E. Court in which the lawsuit was filed (if federal court, name the district; if state court, name the county): N/A
- F. Name of judge to whom case was assigned: N/A
- G. Basic claim made: N/A
- H. Disposition of this case (for example: Was the case dismissed? Was it appealed? Is it still pending?): N/A
- I. Approximate date of disposition: N/A

**IF YOU HAVE FILED MORE THAN ONE LAWSUIT, THEN YOU MUST DESCRIBE THE ADDITIONAL LAWSUITS ON ANOTHER PIECE OF PAPER, USING THIS SAME FORMAT. REGARDLESS OF HOW MANY CASES YOU HAVE PREVIOUSLY FILED, YOU WILL NOT BE EXCUSED FROM FILLING OUT THIS SECTION COMPLETELY, AND FAILURE TO DO SO MAY RESULT IN DISMISSAL OF YOUR CASE. CO-PLAINTIFFS MUST ALSO LIST ALL CASES THEY HAVE FILED.**

### III. Exhaustion of Administrative Remedies

You are required to exhaust all your available administrative remedies before bringing an action in federal court.

A. Is there a grievance procedure available at your institution?

YES (✓) NO ( ) If there is no grievance procedure, skip to F.

B. Have you filed a grievance concerning the facts in this complaint?

YES (✓) NO ( )

C. If your answer is YES:

1. What steps did you take?

I wrote my grievance and gave it to the  
counselor in Cook County Jail, who was in  
charge of Division 9, 1-E, then sent it off to Internal Affs

2. What was the result?

I never received a response back after I  
was interviewed by one of their representi-  
tives.

3. If the grievance was not resolved to your satisfaction, did you appeal?

What was the result (if there was no procedure for appeal, so state.)

I was charged for a criminal case for supposedly  
assaulting % Lee (who had nothing to do with the assault  
by % Williams and % Davis) on Sep 22 of 2007.

D. If your answer is NO, explain why not:

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E. Is the grievance procedure now completed? YES ☒ NO ( )

F. If there is no grievance procedure in the institution, did you complain to authorities? YES ( ) NO ( )

G. If your answer is YES:

1. What steps did you take?

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2. What was the result?

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H. If your answer is NO, explain why not:

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V. Statement of Claim:

State here as briefly as possible the facts of your case. Describe precisely how each defendant is involved. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

On or about January 7, 2007, Petitioner Mr. Daniel Peña, I.D. O.C., I.D. #B-69193, was arrested and taken to DuPage County Jail for approximately 2 (two) weeks, then transferred to Cook County Jail, On or about January 17, 2007. Petitioner was assaulted on or about September 22, 2007, by two Cook County Security Guards, % Williams and % Davis, while being Detained at the Cook County Jail, In A.B.D., tier 1-F, while coming out of Cell 1026.

On or about September 22, 2007, a detainee Mr. David Ernest was out of his cell for his hour of recreation, between 2:00 am and 3:00 am. During his hour Mr. D. Ernest was able to remove his ankle bracelets, and a lock from one of the cell doors chuck holes. At approximately 3:00 am, when shift changed the count was messed up, (would not clear), Because of the items being missing. Mr. D. Ernest tried to bargain these items in exchange for cigarettes, The 7 to 3 shift and the 3 to 11 pm. shifts combined their efforts for a major shake down. They started by shaking Mr. David Ernest and my cells down. 2 (two) %'s were in my cell and % Williams was standing at my door. When % Williams looked at the inside of my door and noticed that I had styrofoam blocking my top chuck.

hole. So, that no-one could and or would shoot Piss in Petitioner's cell. Along with some privacy, % Williams went to yank the strafeam down. And I said, "Come on Williams you know why I have or got that up." "Don't be like that," He looked at me, like I had just slapped him in the face, And then tore down the strafeam, and said "Fuck that and fuck you."

I then said, "You're only talking like that because you got your homies around. But, by yourself you're nothing more or always a faget." "Ass pussy." By this time the lieutenant stepped in and had every body shut up.

By this time, they found the stolen items on tier 1-E, which is across from 1-F, so, they all left, for the exception of % Williams, Davis and Miller. All of which are Black %'s.

When they came back on the tier to run the hours that they were supposed to finish, running them upstairs, but Security Guard Williams came directly to Petitioner's cell. And He asked Petitioner if he wanted his hour out of Petitioner's cell?

Without thinking of Retaliation, Petitioner stated O.K. or yes! % Williams then opened Petitioner's Chuck Hole and Hand cuffed Petitioner in front, The stated % then opened Petitioner's cell door. And Petitioner went to step out. But Security Guard Williams blocked Petitioner's path, and said, "Talk that shit slow Bitch," Petitioner said, "After you cuff me-pussy, you think I'm stupid?" The Security Guard Williams then grabbed



Petitioner's jump-suit, and pulled it over Petitioner's head and then he upper cut Petitioner 2 (two) times to the face. He then pulled Petitioner to the floor, at this point, % Davis ran over and Kicked Petitioner in his head. (While Petitioner's hands were cuffed in front of Petitioner). They both held petitioner down by putting one foot on Petitioner's neck and the other on Petitioner's back. They both held Petitioner down while % Miller called "all available". (% needs help).

Once the rest of the Security Officer's, Captains, Lieutenant, Sergeant, came to assistance of Petitioner, for Petitioner was so badly beaten that he had to be bodily picked up by the Sergeant, Lieutenant and Captain off the floor. Petitioner was taken by Security Officer's down stairs to the Holding Area. While still being hand cuffed, and in ankle bracelets digging into Petitioner's skin.

Petitioner spit up a wad of Blood along with one of Petitioner's teeth back at the tier where the Beating took place.

When Petitioner got to Cermack Infirmary the Doctor Denied Petitioner, Medical Attention, Medical Assistance, Medical treatment and or any Medication, for the pain that Petitioner was in. Stated Doctor Denied the Petitioner the "Right" to see the Dentist for approximately 4 (four) days after the onset of the incident.

Petitioner was then transferred to the Kankakee County Jail. Once petitioner was transferred to Kankakee

County Jail, Petitioner requested to see the Kankakee County Jail Dentist, so that he could remove, Petitioner's upper gum tooth. Another front tooth, that the Cook County Security Guards had loosened and knocked out of or about September 22, 2002.

While Beating Petitioner while he was hand Cuffed with his hands in front of him, And was not trying or doing anything suspicious, was not trying to escape, or hide anything illegal or otherwise, was not violating any laws to be treated the way that the Cook County Security Guards Beat and mistreated Petitioner. Petitioner could not defend himself or do any type of harm to the stated Security Guards at the Cook County Jail. Also being Shackled (Ankle Brackets). This constitutes Cruel and Unusual Punishment.

Petitioner now suffers from Back Pain, Very Bad head aches, Vomiting, Night Mares, And Has cramp pain in the morning when he wakes up, from his either back or Bad head Aches.

When analyzing Eighth Amendment claims that allege force, Courts consider both objective and subjective components. The objective component considers whether the wrong doing was "Harmful Enough," to implicate the eighth amendment; the subjective component considers whether the Officials acted with a Sufficiently culpable state of mind. Under

the subjective component, use of force by Prison Officials (Guards) to maintain or regain control of Jail or Prison may constitute Cruel and Unusual Punishment, if the force amounts to the "unnecessary and wanton inflicted unnecessary pain." The question is whether an official's use of force inflicted "unnecessary and wanton pain," turns on, "The Core Judicial into whether force was applied in a good faith effort to maintain or restore discipline," or "Maliciously and Sadistically for the very purpose of causing harm." Factors to be considered in determining the subjective component include; (1). The need for the application of force; (2). The relationship between the need and amount of force used; (3). The Extent of the threat to the safety of Prison or Jail Staff and other detainees and or inmates as reasonably perceived by the responsible official; And (4). Any effort used by Jail and or Prison officials to temper the severity of a forceful Response. Also includes Mental or Emotional injury's.

### Relief Requested

Petitioner is filing this action against any and all individuals in their; "Individual, Professional, Unprofessional, Official and in their UnOfficial Capacities, while working under color

of State Law.

Petitioner is requesting that this Most Honorable Court grant Petitioner the Sum of \$3,000,000.00, in punitive, \$3,000,000.00, in Compensatory, \$3,000,000.00 in Nominal and \$3,000,000.00 in Monetary Damages.

For the Cruel and Unusual punishment, Loss of Both teeth, Pain and Suffering, the recurring, Bad Head Aches, Back Pain, Vomiting, Night Mares, And the chronic pain that I have in the morning, From Petitioners back and or head. For, Denial of Petitioners Right to receive "Medical Care," For the Medical Denial, Denial of Adequate Medical Treatment, Denial of Medical Attention, Denial of Medical Assistance, Denial of Medication, Indifference was manifested by Prison Security Guards, Nurse's, Doctor's, Administration when the Excessive force was used. Also in response to Petitioner's Medical needs, in intentionally denying and or delaying the so badly needed Medical Care.

All of these rights were in violation of Petitioner's 8th, and 14th United States Constitutional Amendments, and the State of Illinois Constitutional Amendments.

Petitioner is also requesting that "IF" Petitioner "prevails," he would like to be compensated in one lump sum, "Not" increments.

By signing this document, I swear that the facts stated in this Document are true both in substance and to the best of Petitioner Knowledge, information, belief and intent.

Petitioner Pro-Se.  
B-69193, Dorm 60 House  
2600 N. Brighton Ave.  
Dixon, Illinois. 61021.

Part-A / Control #: X

Referred To: \_\_\_\_\_

☐ Processed as a request.

## COOK COUNTY DEPARTMENT OF CORRECTIONS DETAINEE GRIEVANCE

 Detainee Last Name: [REDACTED] Peña First Name: Daniel

 ID #: 2007-0004268 Div.: 9 Living Unit: 1-E Date: 11/07/07

BRIEF SUMMARY OF THE COMPLAINT: On 9-22-07 % Williams & % Davis of 3-11 shift assaulted me and knocked one tooth out, disconnected another from the root (which was then pulled 24 days later in Kankakee Jail) and loosed yet another front tooth. I demanded medical attention and was told by a cermak Doctor that I would be referred to the Dentist. I was then shipped to Kankakee on 9-29-07. I saw the Dentist there on 10-16-07 and he pulled the tooth that was just hanging there. He then told me there was a piece of bone inside my gum from where the tooth got knocked out on 9-22-07. He said that I would need surgery to be able to remove it. That if it started pericude through my gums or if it was causing me pain that it would be taken care of. His hope was that it would mold into bone next to it. Well that didn't happen and it is causing me pain.

NAME OF STAFF OR DETAINEE(S) HAVING INFORMATION REGARDING THIS COMPLAINT:

ACTION THAT YOU ARE REQUESTING:

Dentist in Kankakee & the two Kankakee %s that escorted me to the Dentist.  
Went my front teeth back and I want the pain to stop.

 DETAINEE SIGNATURE: [Signature]

C.R.W.'S SIGNATURE: \_\_\_\_\_

 DATE C.R.W. RECEIVED: 11/1/07

Please note: Decisions of the "Detainee Disciplinary Hearing Board" cannot be grieved or appealed through the use of a grievance form. All appeals must be made in writing and directly submitted to the Superintendent.